

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY) MDL NO. 1456
AVERAGE WHOLESALE PRICE)
LITIGATION) CIVIL ACTION: 01-CV-12257-PBS
) Subcategory Docket: 06-CV-11337-PBS
)
THIS DOCUMENT RELATES TO) Judge Patti B. Saris
)
U.S. ex rel. Ven-A-Care of the Florida Keys,) Magistrate Judge Marianne B. Bowler
Inc. v. Abbott Laboratories, Inc.,)
No. 07-CV-11618-PBS)
) **ORAL ARGUMENT REQUESTED**

**ABBOTT LABORATORIES INC.'S
MOTION FOR SUMMARY JUDGMENT**

Defendant Abbott Laboratories Inc. (“Abbott”) hereby respectfully requests, pursuant to Federal Rules of Civil Procedure 56, that this Court grant summary judgment as to several aspects of this False Claims Act (“FCA”) case brought by Ven-A-Care of the Florida Keys, Inc. (“Ven-A-Care”). Specifically, Abbott asks the Court to grant summary judgment for Abbott as to:

- All AWP-based claims accruing before February 15, 1999, due to the False Claims Act’s six-year statute of limitations;
- All claims with respect to each Ery drug accruing earlier than six years before the drug was added to the case;
- All damages accruing after February 15, 2001 because the Government’s undisputed knowledge of the claims by that point vitiate any causation of damages;
- Count One because the claim is legally defective, and Ven-A-Care has no evidence even to prove its legally defective claim;
- All damages because Ven-A-Care lacks evidence to prove that any of the Medicaid payments, for which it seeks damages, were based on a price reported by Abbott, about which Ven-A-Care complains;

- All damages based on Ven-A-Care's expert's improper extrapolation; and
- All claims based on Texas and California Medicaid claims, which the parties already have settled.

Abbott incorporates herein its Memorandum of Law and its Rule 56.1 Statement of Facts, which Abbott is filing with this Motion.

WHEREFORE, Abbott requests that the Court grants this motion and enters summary judgment for Abbott on the grounds stated above and any other relief that the Court deems just.

Dated: August 28, 2009

Respectfully submitted,

/s/ Tara A. Fumerton

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CERTIFICATE OF SERVICE

I, Tara A. Fumerton, an attorney, hereby certify that I caused a true and correct copy of the foregoing ABBOTT LABORATORIES INC.'S MOTION FOR SUMMARY JUDGMENT to be served on all counsel of record electronically by causing same to be posted via LexisNexis, this 28th day of August, 2009.

/s/ Tara A. Fumerton
Tara A. Fumerton